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No. 91-829

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1991

ESTATE OF MATT JONES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner was collaterally estopped in a civil forfeiture action from contesting that its decedent, who had been convicted of conspiracy to produce marijuana, knew of the conspiracy.



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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is unpublished, but the judgment is noted at 941 F.2d 1210 (Table).

JURISDICTION

The judgment of the court of appeals was entered on August 16, 1991. The petition for a writ of certiorari was filed on November 14, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In a civil action brought pursuant to 21 U.S.C. 881(a)(7) in the United States District Court for the Eastern District of Kentucky, the United States

sought forfeiture of Matt Jones's farm following Jones's conviction for conspiracy to manufacture, produce, and grow marijuana, in violation of 21 U.S.C. 846. Gov't C.A. Br. 3. The district court granted the government's motion for summary judgment, Pet. App. 10c-21c, and the court of appeals affirmed as to petitioner. Pet. App. 1a-14a.¹

1. On May 14, 1987, Kentucky State Police Officer Ronnie Ray visited the Jones farm to investigate cattle theft. Ray observed in plain view cultivated marijuana in a field near the house. Ray ultimately discovered 212 marijuana plants in potted containers in outbuildings and in an open field on Jones's land. Pet. App. 2a-3a. Following a jury trial, Matt Jones was convicted on one count of conspiracy to manufacture, produce, and grow marijuana.²

During the pendency of those proceedings, the government filed the present action for civil forfeiture under Section 881(a)(7). Matt Jones died following his criminal conviction but prior to the conclusion of the forfeiture action. Pet. App. 4a. Subsequent to the entry of judgment in the criminal case, the district court in this case granted the government's motion for summary judgment. The court determined in relevant part that Matt Jones's criminal conviction

¹ Margaret Jones, the wife of petitioner's decedent, was not criminally prosecuted, but intervened in the forfeiture proceedings to protect her interest in the property. The district court also granted the government's motion for summary judgment as to Margaret Jones. The court of appeals, however, reversed and remanded as to her, concluding that there was a material issue of fact regarding her knowledge of the unlawful activity on the property. Pet. App. 10a-14a.

² The jury acquitted Matt Jones of producing marijuana and of possessing marijuana with the intent to distribute it. Pet. App. 3a.

precluded an assertion of the innocent owner defense. Pet. App. 17c-21c.³

2. The court of appeals affirmed the district court's holding that the innocent owner defense was unavailable as to Matt Jones. Pet. App. 4a-10a.⁴ The court reasoned that Jones's conviction for conspiracy to produce marijuana collaterally estopped petitioner from contesting Jones's knowledge of or consent to the growing of the marijuana on his farm:

The issue at the criminal trial was Matt Jones' involvement in the production of marijuana. The jury convicted him of the conspiracy charge. In order to convict, the jury necessarily would have found that Matt Jones knew about and consented to the marijuana discovered on his farm. * * * [N]o genuine issue of material fact exists as to whether Matt Jones had knowledge of the use of his property or consented to the use.

³ Petitioner exclusively contests the award of summary judgment on the innocent owner defense, which provides that "no property shall be forfeited * * *, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." 21 U.S.C. 881(a)(7).

⁴ The district court had applied the "exceptionally innocent" owner defense, which requires the owner to establish that he was uninvolved in and unaware of the criminal conduct, and that he had taken all reasonable steps to prevent the prohibited use of the property. Pet. App. 15c-16c. The court of appeals agreed with petitioner that this defense was inapposite in cases, such as the present one, that involve real, rather than personal, property. Pet. App. 5a. The court concluded that the inquiry in this context properly turned on whether the proscribed activity occurred without petitioner's knowledge or consent. Pet. App. 7a. Even under the more relaxed standard, however, the court concluded that petitioner was collaterally estopped from asserting the defense. *Ibid.*

Pet. App. 9a. The court of appeals accordingly held that there was no issue of material fact concerning Matt Jones's knowledge or consent, and that the district court properly granted summary judgment for the government. Pet. App. 9a-10a.

ARGUMENT

Petitioner contends that the district court erred in holding that Matt Jones's conviction for conspiracy to produce marijuana collaterally estopped petitioner from asserting the defense that Jones did not know of or consent to a conspiracy to cultivate marijuana on his farm. Pet. 15-20. That contention is without merit.

The relevant statute provides for forfeiture of "[a]ll real property * * *, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment." 21 U.S.C. 881(a)(7). Matt Jones was convicted of one of the covered offenses—conspiring to manufacture, produce, and grow marijuana, in violation of 21 U.S.C. 846. To establish a violation of Section 846, the government was required to prove "the existence of an agreement to violate the drug laws and that each conspirator knew of, intended to join and participated in the conspiracy." *United States v. Pearce*, 912 F.2d 159, 161 (6th Cir. 1990) (quoting *United States v. Stanley*, 765 F.2d 1224, 1237 (5th Cir. 1985)), cert. denied, 111 S. Ct. 978 (1991). As the court of appeals correctly observed, the facts adduced at Matt Jones's criminal trial concerned *only* the marijuana discovered on Jones's farm. Pet. App. 9a. To convict Matt Jones, therefore, the jury had to find that he knew of and was a party to an agreement to cultivate marijuana on his farm. Hence, the precise issue underlying the innocent owner defense

—whether the conspiracy was effected without Matt Jones’s “knowledge or consent,” 21 U.S.C. 881(a) (7) —was actually litigated during the criminal trial, and the contrary determination was necessary to the criminal judgment. Under applicable standards governing issue preclusion, see, *e.g.*, *United States v. Smith*, 730 F.2d 1052, 1057 (6th Cir. 1984),⁵ the court of appeals properly held petitioner’s innocent owner defense to be precluded as a matter of law.⁶

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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⁵ Petitioner does not contest the Sixth Circuit’s standard for determining issue preclusion, as explained in *United States v. Smith*, 730 F.2d at 1057. Rather, petitioner claims that the Sixth Circuit misapplied *Smith* in this case. Pet. 15-16. That claim does not warrant this Court’s review. See *Wisniewski v. United States*, 353 U.S. 901, 902 (1957).

⁶ It is well settled that in a civil forfeiture proceeding a court may give collateral estoppel effect to issues necessarily determined in a prior criminal case. See, *e.g.*, *United States v. All Right, Title & Interest in Real Property & Building Known as 303 West 116th Street, New York, New York*, 901 F.2d 288, 291-292 (2d Cir. 1990); *United States v. “Monkey”*, 725 F.2d 1007, 1010 (5th Cir. 1984); *United States v. Parcel of Land & Buildings Located Thereon at 40 Moon Hill Road, Northbridge, Massachusetts*, 721 F. Supp. 1, 3 (D. Mass. 1988), *aff’d*, 884 F.2d 41, 42-43 (1st Cir. 1989).